



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,277	11/29/2001	Bruce Jon Compton	30413-101	3115
26486	7590	06/16/2006		EXAMINER
				WEBMAN, EDWARD J
			ART UNIT	PAPER NUMBER
				1616

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No. .	Applicant(s)
	09/997,277	COMPTON ET AL.
	Examiner	Art Unit
	Edward J. Webman	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 March 2006.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8,10-15,17-23 and 26-28 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8,10-15,17-23 and 26-28 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 11-15, 18-23 are rejected under 35 U.S.C. 102(e) as being anticipated by WO97/02810 (citations below are in equivalent US 6,001,305 to Coombes et al.).

Coombes et al teach lamellar particles comprising a polymer and an active agent (abstract). A thickness of 50 nm-80 um is disclosed (column3 lines 61-62). A width of 0.5um to 80 um and an aspect ratio of length to width of 160:1-1:1 is disclosed (column 4 lines 1-6). “lamellar” is defined as comprising thin plates (column 3 lines 49-51). The active agent is absorbed into the lamellar particles (column 4 line 49). Suspensions, tablets and capsules are specified (column 7 line 11). 19% w/w active is disclosed ((Table 1 column 9 line 16). Influenza virus is disclosed (example 7), illustrative of porosity.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8, 10-15, 18-23, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coombes et al in view of Takahashi et al.

Coombes et al is described above.

Takahashi et al teach adding a powder containing a pharmaceutical to a polymer solution, and evaporating a solvent to achieve a solid composition (abstract). Slow release is disclosed (column 2 lines 10-11). Flakes are specified (column 40 line 1). Powders 0.1-40um are disclosed (column 4 line 9).

It would have been obvious to incorporate a powder comprising a pharmaceutical in the composition of Coombes et al to achieve the beneficial effect of slow release. As to the claimed hydrogel, it would be an obvious expedient, even to the layman, to ingest the composition of Coombes et al by mixing it into a food item such as yoghurt.

Claims 1-8, 15, 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Vernice (US 6,117,419).

Vernice teaches flakes comprising an active ingredient (abstract). Flakes 3-30 mils thick with a surface at least 1x1 mm (column 3 lines 10-12) are disclosed. Waxes, including rice bran wax, are specified (column 3 lines 49). 40 parts wax is specified (column 3 lines 41-42). Natural polymers such as alginate gum, are disclosed (column 4 lines 3 lines 14-24). Up to 40% polymer is specified (column 3 lines 31-34). Fatty acids are disclosed (column 3 line 47-48). Up to 50% active is specified (column 4 lines 1-2). Medicaments, including vitamin D, are specified (column 3 lines 58-66). As to the claimed drug uptake enhancer, fatty acids are well known in the art as such. As to the claimed oral ingestion, the above cited ingredients are all edible.

No claims allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1600